

HB 2671 - S AMD

By Senators Doumit, Prentice

ADOPTED 03/07/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 82.32.045 and 2003 1st sp.s. c 13 s 8 are each  
4 amended to read as follows:

5 (1) Except as otherwise provided in this chapter, payments of the  
6 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,  
7 along with reports and returns on forms prescribed by the department,  
8 are due monthly within (~~twenty~~) twenty-five days after the end of the  
9 month in which the taxable activities occur.

10 (2) The department of revenue may relieve any taxpayer or class of  
11 taxpayers from the obligation of remitting monthly and may require the  
12 return to cover other longer reporting periods, but in no event may  
13 returns be filed for a period greater than one year. For these  
14 taxpayers, tax payments are due on or before the last day of the month  
15 next succeeding the end of the period covered by the return.

16 (3) The department of revenue may also require verified annual  
17 returns from any taxpayer, setting forth such additional information as  
18 it may deem necessary to correctly determine tax liability.

19 (4) Notwithstanding subsections (1) and (2) of this section, the  
20 department may relieve any person of the requirement to file returns if  
21 the following conditions are met:

22 (a) The person's value of products, gross proceeds of sales, or  
23 gross income of the business, from all business activities taxable  
24 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per  
25 year;

26 (b) The person's gross income of the business from all activities  
27 taxable under chapter 82.16 RCW is less than twenty-four thousand  
28 dollars per year; and

29 (c) The person is not required to collect or pay to the department

1 of revenue any other tax or fee which the department is authorized to  
2 collect.

3 **Sec. 2.** RCW 82.23B.020 and 2003 1st sp.s. c 13 s 9 are each  
4 amended to read as follows:

5 (1) An oil spill response tax is imposed on the privilege of  
6 receiving crude oil or petroleum products at a marine terminal within  
7 this state from a waterborne vessel or barge operating on the navigable  
8 waters of this state. The tax imposed in this section is levied upon  
9 the owner of the crude oil or petroleum products immediately after  
10 receipt of the same into the storage tanks of a marine terminal from a  
11 waterborne vessel or barge at the rate of one cent per barrel of crude  
12 oil or petroleum product received.

13 (2) In addition to the tax imposed in subsection (1) of this  
14 section, an oil spill administration tax is imposed on the privilege of  
15 receiving crude oil or petroleum products at a marine terminal within  
16 this state from a waterborne vessel or barge operating on the navigable  
17 waters of this state. The tax imposed in this section is levied upon  
18 the owner of the crude oil or petroleum products immediately after  
19 receipt of the same into the storage tanks of a marine terminal from a  
20 waterborne vessel or barge at the rate of four cents per barrel of  
21 crude oil or petroleum product.

22 (3) The taxes imposed by this chapter shall be collected by the  
23 marine terminal operator from the taxpayer. If any person charged with  
24 collecting the taxes fails to bill the taxpayer for the taxes, or in  
25 the alternative has not notified the taxpayer in writing of the  
26 imposition of the taxes, or having collected the taxes, fails to pay  
27 them to the department in the manner prescribed by this chapter,  
28 whether such failure is the result of the person's own acts or the  
29 result of acts or conditions beyond the person's control, he or she  
30 shall, nevertheless, be personally liable to the state for the amount  
31 of the taxes. Payment of the taxes by the owner to a marine terminal  
32 operator shall relieve the owner from further liability for the taxes.

33 (4) Taxes collected under this chapter shall be held in trust until  
34 paid to the department. Any person collecting the taxes who  
35 appropriates or converts the taxes collected shall be guilty of a gross  
36 misdemeanor if the money required to be collected is not available for  
37 payment on the date payment is due. The taxes required by this chapter

1 to be collected shall be stated separately from other charges made by  
2 the marine terminal operator in any invoice or other statement of  
3 account provided to the taxpayer.

4 (5) If a taxpayer fails to pay the taxes imposed by this chapter to  
5 the person charged with collection of the taxes and the person charged  
6 with collection fails to pay the taxes to the department, the  
7 department may, in its discretion, proceed directly against the  
8 taxpayer for collection of the taxes.

9 (6) The taxes shall be due from the marine terminal operator, along  
10 with reports and returns on forms prescribed by the department, within  
11 (~~twenty~~) twenty-five days after the end of the month in which the  
12 taxable activity occurs.

13 (7) The amount of taxes, until paid by the taxpayer to the marine  
14 terminal operator or to the department, shall constitute a debt from  
15 the taxpayer to the marine terminal operator. Any person required to  
16 collect the taxes under this chapter who, with intent to violate the  
17 provisions of this chapter, fails or refuses to do so as required and  
18 any taxpayer who refuses to pay any taxes due under this chapter, shall  
19 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

20 (8) Upon prior approval of the department, the taxpayer may pay the  
21 taxes imposed by this chapter directly to the department. The  
22 department shall give its approval for direct payment under this  
23 section whenever it appears, in the department's judgment, that direct  
24 payment will enhance the administration of the taxes imposed under this  
25 chapter. The department shall provide by rule for the issuance of a  
26 direct payment certificate to any taxpayer qualifying for direct  
27 payment of the taxes. Good faith acceptance of a direct payment  
28 certificate by a terminal operator shall relieve the marine terminal  
29 operator from any liability for the collection or payment of the taxes  
30 imposed under this chapter.

31 (9) All receipts from the tax imposed in subsection (1) of this  
32 section shall be deposited into the state oil spill response account.  
33 All receipts from the tax imposed in subsection (2) of this section  
34 shall be deposited into the oil spill prevention account.

35 (10) Within forty-five days after the end of each calendar quarter,  
36 the office of financial management shall determine the balance of the  
37 oil spill response account as of the last day of that calendar quarter.  
38 Balance determinations by the office of financial management under this

1 section are final and shall not be used to challenge the validity of  
2 any tax imposed under this chapter. The office of financial management  
3 shall promptly notify the departments of revenue and ecology of the  
4 account balance once a determination is made. For each subsequent  
5 calendar quarter, the tax imposed by subsection (1) of this section  
6 shall be imposed during the entire calendar quarter unless:

7 (a) Tax was imposed under subsection (1) of this section during the  
8 immediately preceding calendar quarter, and the most recent quarterly  
9 balance is more than nine million dollars; or

10 (b) Tax was not imposed under subsection (1) of this section during  
11 the immediately preceding calendar quarter, and the most recent  
12 quarterly balance is more than eight million dollars.

13 **Sec. 3.** RCW 82.27.060 and 2003 1st sp.s. c 13 s 10 are each  
14 amended to read as follows:

15 The taxes levied by this chapter shall be due for payment monthly  
16 and remittance therefor shall be made within (~~twenty~~) twenty-five  
17 days after the end of the month in which the taxable activity occurs.  
18 The taxpayer on or before the due date shall make out a signed return,  
19 setting out such information as the department of revenue may require,  
20 including the gross measure of the tax, any deductions, credits, or  
21 exemptions claimed, and the amount of tax due for the preceding monthly  
22 period, which amount shall be transmitted to the department along with  
23 the return.

24 The department may relieve any taxpayer from the obligation of  
25 filing a monthly return and may require the return to cover other  
26 periods, but in no event may periodic returns be filed for a period  
27 greater than one year. In such cases tax payments are due on or before  
28 the last day of the month next succeeding the end of the period covered  
29 by the return.

30 **Sec. 4.** RCW 82.32.085 and 1990 c 69 s 3 are each amended to read  
31 as follows:

32 (1) "Electronic funds transfer" means any transfer of funds, other  
33 than a transaction originated by check, drafts, or similar paper  
34 instrument, which is initiated through an electronic terminal,  
35 telephonic instrument, or computer or magnetic tape so as to order,

1 instruct, or authorize a financial institution to debit or credit an  
2 account.

3 ~~((The electronic funds transfer is to be completed so that the  
4 state receives collectible funds on or before the next banking day  
5 following the due date.))~~

6 (2)(a) Except as provided in (b) of this subsection, the electronic  
7 funds transfer is to be completed so that the state receives  
8 collectible funds on or before the next banking day following the due  
9 date.

10 (b) A remittance made using the automated clearinghouse debit  
11 method will be deemed to be received on the due date if the electronic  
12 funds transfer is initiated on or before 11:59 p.m. pacific time on the  
13 due date with an effective payment date on or before the next banking  
14 day following the due date.

15 (3)(a) The department shall adopt rules necessary to implement the  
16 provisions of RCW 82.32.080 and this section. The rules shall include  
17 but are not limited to: ~~((1))~~ (i) Coordinating the filing of tax  
18 returns with payment by electronic funds transfer; ~~((2))~~ (ii) form  
19 and content of electronic funds transfer; ~~((3))~~ (iii) voluntary use  
20 of electronic funds transfer with permission of the department; ~~((4))~~  
21 (iv) use of commonly accepted means of electronic funds transfer;  
22 ~~((5))~~ (v) means of crediting and recording proof of payment; and  
23 ~~((6))~~ (vi) means of correcting errors in transmission.

24 (b) Any changes in the threshold of tax shall be implemented with  
25 a separate rule-making procedure.

26 NEW SECTION. Sec. 5. (1) The legislature recognizes the following  
27 with respect to the payment of excise taxes to the department of  
28 revenue by electronic funds transfer:

29 (a) Taxpayers required to pay their taxes by electronic funds  
30 transfer must do so through the use of either the automated  
31 clearinghouse debit method or automated clearinghouse credit method;

32 (b) For a remittance by electronic funds transfer to be considered  
33 timely, the transfer must be completed so that the state receives  
34 collectible funds on or before the next banking day following the due  
35 date;

36 (c) For the state to receive collectible funds on or before the

1 next banking day following the due date, taxpayers using the automated  
2 clearinghouse debit method must initiate the transfer before 5:00 p.m.  
3 pacific time on the due date;

4 (d) The department of revenue receives information identifying the  
5 precise date and time the electronic funds transfer is initiated when  
6 a taxpayer uses the debit method; and

7 (e) The department receives information identifying only the date  
8 that the state receives collectible funds when a taxpayer uses the  
9 automated clearinghouse credit method.

10 (2) The legislature therefore finds that a remittance made using  
11 the automated clearinghouse debit method should be deemed to be  
12 received on the due date if the transfer is initiated on or before  
13 11:59 p.m. pacific time on the due date with an effective payment date  
14 on or before the next banking day following the due date. The  
15 legislature further finds that because the department does not receive  
16 information about when an electronic funds transfer is initiated when  
17 a taxpayer uses the automated clearinghouse credit method, such  
18 transfers must be completed so that the state receives collectible  
19 funds on or before the next banking day following the due date.

20 **Sec. 6.** RCW 82.32.090 and 2003 1st sp.s. c 13 s 13 are each  
21 amended to read as follows:

22 (1) If payment of any tax due on a return to be filed by a taxpayer  
23 is not received by the department of revenue by the due date, there  
24 shall be assessed a penalty of five percent of the amount of the tax;  
25 and if the tax is not received on or before the last day of the month  
26 following the due date, there shall be assessed a total penalty of  
27 fifteen percent of the amount of the tax under this subsection; and if  
28 the tax is not received on or before the last day of the second month  
29 following the due date, there shall be assessed a total penalty of  
30 twenty-five percent of the amount of the tax under this subsection. No  
31 penalty so added shall be less than five dollars.

32 (2) If the department of revenue determines that any tax (~~is due~~)  
33 has been substantially underpaid, there shall be assessed a penalty of  
34 five percent of the amount of the tax determined by the department to  
35 be due(~~is due~~). If payment of any tax determined by the department to  
36 be due is not received by the department by the due date specified in  
37 the notice, or any extension thereof, there shall be assessed a total

1 penalty of fifteen percent of the amount of the tax under this  
2 subsection; and if ~~((the))~~ payment of any tax determined by the  
3 department to be due is not received on or before the thirtieth day  
4 following the due date specified in the notice of tax due, or any  
5 extension thereof, there shall be assessed a total penalty of twenty-  
6 five percent of the amount of the tax under this subsection. No  
7 penalty so added shall be less than five dollars. As used in this  
8 section, "substantially underpaid" means that the taxpayer has paid  
9 less than eighty percent of the amount of tax determined by the  
10 department to be due for all of the types of taxes included in, and for  
11 the entire period of time covered by, the department's examination, and  
12 the amount of underpayment is at least one thousand dollars.

13 (3) If a warrant be issued by the department of revenue for the  
14 collection of taxes, increases, and penalties, there shall be added  
15 thereto a penalty of ten percent of the amount of the tax, but not less  
16 than ten dollars.

17 (4) If the department finds that a person has engaged in any  
18 business or performed any act upon which a tax is imposed under this  
19 title and that person has not obtained from the department a  
20 registration certificate as required by RCW 82.32.030, the department  
21 shall impose a penalty of five percent of the amount of tax due from  
22 that person for the period that the person was not registered as  
23 required by RCW 82.32.030. The department shall not impose the penalty  
24 under this subsection (4) if a person who has engaged in business  
25 taxable under this title without first having registered as required by  
26 RCW 82.32.030, prior to any notification by the department of the need  
27 to register, obtains a registration certificate from the department.

28 (5) If the department finds that all or any part of a deficiency  
29 resulted from the disregard of specific written instructions as to  
30 reporting or tax liabilities, the department shall add a penalty of ten  
31 percent of the amount of the additional tax found due because of the  
32 failure to follow the instructions. A taxpayer disregards specific  
33 written instructions when the department of revenue has informed the  
34 taxpayer in writing of the taxpayer's tax obligations and the taxpayer  
35 fails to act in accordance with those instructions unless the  
36 department has not issued final instructions because the matter is  
37 under appeal pursuant to this chapter or departmental regulations. The  
38 department shall not assess the penalty under this section upon any

1 taxpayer who has made a good faith effort to comply with the specific  
2 written instructions provided by the department to that taxpayer.  
3 Specific written instructions may be given as a part of a tax  
4 assessment, audit, determination, or closing agreement, provided that  
5 such specific written instructions shall apply only to the taxpayer  
6 addressed or referenced on such documents. Any specific written  
7 instructions by the department of revenue shall be clearly identified  
8 as such and shall inform the taxpayer that failure to follow the  
9 instructions may subject the taxpayer to the penalties imposed by this  
10 subsection.

11 (6) If the department finds that all or any part of the deficiency  
12 resulted from an intent to evade the tax payable hereunder, a further  
13 penalty of fifty percent of the additional tax found to be due shall be  
14 added.

15 (7) The penalties imposed under subsections (1) through (4) of this  
16 section can each be imposed on the same tax found to be due. This  
17 subsection does not prohibit or restrict the application of other  
18 penalties authorized by law.

19 (8) The department of revenue may not impose both the evasion  
20 penalty and the penalty for disregarding specific written instructions  
21 on the same tax found to be due.

22 (9) For the purposes of this section, "return" means any document  
23 a person is required by the state of Washington to file to satisfy or  
24 establish a tax or fee obligation that is administered or collected by  
25 the department of revenue, and that has a statutorily defined due date.

26 NEW SECTION. **Sec. 7.** (1) Sections 1 through 3 of this act apply  
27 to returns due after July 31, 2006.

28 (2) Section 4 of this act applies to payments due after July 31,  
29 2006.

30 (3) Section 6 of this act only applies to assessments originally  
31 issued after June 30, 2006.

32 NEW SECTION. **Sec. 8.** This act does not affect any existing right  
33 acquired or liability or obligation incurred under the sections amended  
34 in this act or under any rule or order adopted under those sections,  
35 nor does it affect any proceeding instituted under those sections.

1        NEW SECTION.    **Sec. 9.**    (1) Sections 1 through 4 of this act take  
2 effect August 1, 2006.  
3        (2) Sections 6 and 7 of this act take effect July 1, 2006."

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